

Amendment and Response

Serial No.: 10/702,369

Confirmation No.: 8480

Filed: 6 November 2003

For: BEAK TREATMENT WITH TONGUE PROTECTION

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Remarks

The Office Action mailed 4 April 2006 has been received and reviewed. Claims 1, 6, 11 and 15 are amended and new claims 19-23 are presented. As a result, claims 1-23 are pending upon entry of this amendment. Reconsideration and withdrawal of the rejections are respectfully requested as discussed below.

Obviousness-Type Double Patenting Rejection

Claims 1-5 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 of copending Application No. 10/346,981 and claims 1-29 of U.S. Patent No. 5,651,731. Upon an indication of otherwise allowable subject matter and in the event this rejection is maintained, Applicants will provide an appropriate response.

The 35 U.S.C. §103 Rejection

Claims 1-13 and 15-17 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Gourlandt* (U.S. Patent No. 4,446,819) in view of *Meyn* (NL 8802812A). To expedite the prosecution of the above-identified patent application, claims 1, 6, 11 and 15 have been amended as suggested by the Examiner.

More specifically, claims 1 and 6 have been amended to recite "using a tongue control protrusion protruding from a surface defining the beak receiving aperture in the bird head positioning device." Additionally, in claim 6, language regarding the head positioning device and the tongue control protrusion was deleted to avoid repetitiveness. Neither *Gourlandt* nor *Meyn* disclose or suggest, alone or together, the methods recited in independent claims 1 and 6 as amended or their dependent claims 2-5 and 7-10. For at least these reasons, reconsideration and withdrawal of the rejection of claims 1 and 6 and dependent claims 2-5 and 7-10 are respectfully requested.

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Claim 11 has been amended to recite "protruding from a surface defining the beak receiving aperture in" in place of "located proximate." Neither *Gourlandt* nor *Meyn* disclose or suggest, alone or together, the apparatus recited in independent claim 11 as amended or its dependent claims 12-13. For at least these reasons, reconsideration and withdrawal of the rejection of claim 11 and dependent claims 12-13 are respectfully requested.

Claim 15 has been amended to recite "protruding from a surface defining" in place of "extending into." Neither *Gourlandt* nor *Meyn* disclose or suggest, alone or together, the apparatus recited in independent claim 15 as amended or its dependent claims 16-17. For at least these reasons, reconsideration and withdrawal of the rejection of claim 15 and dependent claims 16-17 are respectfully requested.

Objected Claims

Claims 14 and 18 were objected to as being dependent upon a rejected base claim. However, at this time claims 14 and 18 were not modified because it is believed that such claims are dependent from claims that are in allowable form as discussed above.

New Claims 19-20

New independent claim 19 incorporates the recitations of original claims 11 and 12. New independent claim 20 incorporates the recitations of original claims 15 and 16.

Dependent claims 12 and 16 were rejected as obvious over the combination of *Gourlandt* in view of *Meyn*. Applicants respectfully traverse the obviousness rejection of the original claims 12 and 16 as applied to new claims 19 and 20.

Gourlandt's control member 62 is designed to be moved as a bird head is inserted into the recess 54 ("Inward movement of control member 62 causes post 88 to pivot," *Gourlandt*, col. 5, lines 24-25. "[P]ress[] the open beak against control member 62 to close retainers 66," *Gourlandt*, col. 7, lines 48-49). As a result, the control member 62 is not "fixed" in position.

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In contrast, new claims 19 and 20 both recite fixed tongue protrusions. As discussed above, the element of *Gourlandt* identified as the tongue control protrusion (i.e., control member 62) must move to operate the apparatus. As a result, *Gourlandt* does not teach or suggest a fixed tongue control protrusion and no assertion is made that *Meyn* addresses this deficiency.

For at least these reasons, Applicants submit that a *prima facie* case of obviousness cannot be supported by the proposed combination of *Gourlandt* in view of *Meyn*. Reconsideration and withdrawal of the rejection of original claims 12 and 16 (now claims 19 and 20) are, therefore, respectfully requested.

New Claim 21

New independent claim 21 is presented to encompass a method like that recited in original claim 1 but in which the pressing is performed "using a tongue control protrusion fixedly mounted within the beak receiving aperture."

Entry and consideration of new claim 21 are respectfully requested.

New Claims 22-23

New independent claim 22 incorporates the recitations of claims 11 and 14. New independent claim 23 incorporates the recitations of claims 15 and 18. Claims 14 and 18 were identified in the Office Action as "allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims." *Office Action*, p. 6 (April 4, 2005). New claims 22 and 23 present claims 14 and 18 in independent form.

As a result, Applicants respectfully submit that new claims 22 and 23 are allowable as presented.

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Summary

It is respectfully submitted that the pending claims 1-23 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

By

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Direct Dial (612) 305-1218CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 1st day of September, 2006, at 12:11 pm (Central Time).

By: R. Cynthia J. Graham
Name: Rachel Graham - Graham